



Cornerstone Advocacy:

Achieving the Client's Objectives to Shorten
Foster Care Stays and Reunify the Family

Rick Barinbaum, LMSW

Sandy Rosin, Esq.

What do we mean in the Child Dependency context?

- **Develop a Legal Theory and Strategy to Advance Your Client's Objectives**
(in addition to defending the petition), especially:
 - **visits** that speed reunification;
 - well-tailored **services** that make it more likely you will secure reunification;
 - **placement** options that support a child's attachment to the parent; and
 - ways to leverage **out-of-court opportunities** for advocacy
- **Advocate in and out of Court** to advance their objectives even before adjudication
- **Find opportunities to make "small adjustments" to engage in "small" litigation,** i.e. an oral application well-supported in facts/law and **motions** directed toward objectives
- ***applies to representing youth too***

The Four Cornerstones

Visiting

Should be as frequent and long as possible, and in settings that most closely mimic family life.

Placement

Should support a child's connections to family and the people and institutions that the child was connected to before placement.

"Cornerstone Advocacy"
supports family
reunification by devoting
intensive advocacy to a
case in four areas.

Services

Should address a parent and child's strengths and needs.

Conferences

Should occur out of court and provide opportunities for parents and older youth to meaningfully participate in their case planning.

Redefine the “Win” and Change the Narrative

For yourself and the Client—helps the client feel Progress

Help the “System” see your Client differently (help yourself do this too)

To set the direction of the case towards reunification from the outset

While Cornerstone Advocacy should begin on day one, it can and should continue throughout the case, regardless of when a trial date is set.

Our Model and Results

- 50% of our clients' children do not enter care
- Median LOS/FC of 4.5 months (avg over 7 years) compared to 11.5 months (city) prior to becoming the primary defender;
- 37% of kids returned within six months compared to 28% ; 52% within one year compared to 43% (state)
- Re-entry 8% compared to 15% (state)
- Dismissal rate of 33% compared to 11% (ACD)



Cornerstone Advocacy

1. Always ask WHY?
2. REFRAME
3. ARGUE from Common Sense and Compassion
4. Learn a few regs or policy directives
5. Think about "Small Adjustments" and "Next Actions"

The First Cornerstone: Placement

Appropriate placement eases the child's transition to foster care

- A placement that helps children stay connected to teachers, friends, and other community supports like therapists or physicians minimizes the disruption in a child's life.

Appropriate placement keeps parents engaged

- Foster parents who are willing to support a parent and child's relationship play a critical role in maintaining family ties that inspire parents to stay engaged in services.

Appropriate placement supports reunification

- A placement which appropriately supports a child's connection to family promotes reunification and eases the transition home.

The Second Cornerstone: Services

Poor or Inappropriate Services



may be ill-suited to the family and may create unnecessary demands on a parent who must attend programs, court appearances, and visits



may lose legitimacy for parents and can cause them to disengage or “fail to comply”

Creative and flexible services



will keep parents engaged by ensuring that the services are meaningful and manageable given the parents’ other commitments



will move the family towards reunification more quickly by addressing their needs and building on their strengths

The Third Cornerstone: Conferences

Many important decisions about a family's life are made outside court in TDMs and staffings.

- Will the family remain together?
- Will a family member become a foster parent?
- How often will the parent and child visit each week?
- Is the family ready for unsupervised visits?

However, historically there has been a disconnect between the social work sphere and the legal sphere.

- An attorney who is not aware of decisions made at a TDM or staffing may have inaccurate information or be unaware of issues arising from these conferences.

The Fourth Cornerstone: Visiting

Visiting is the key
to parent
engagement

- Visiting enables parents to continue the relationship with their children and inspires them to keep working on getting them home.

Visiting helps
children cope
with foster care
and eventually
with the
transition home

- When children can see their parents often and in circumstances that make them comfortable, they can talk with the people they most need to about what has happened—their parents.
- Quality visiting can help children preserve cherished rituals, share stories from school and social life, and continue to seek advice and encouragement from their parents.

Meaningful and
frequent visitation
is the single best
predictor of safe
and lasting
reunification

- Practitioners should advocate for more frequent visits with as little supervision as necessary.
- When possible, visits should occur outside the agency and include activities that mimic family life.
- ALWAYS explore Visit Hosts

The Legal Basis for Cornerstone Advocacy

“Reasonable efforts”

- The passage of ASFA prompted a renewed focus on the agency’s duty to make reasonable efforts to safely reunify families. Think about how the Cornerstone issues can fairly be deemed a “reasonable effort” in support of reunification.

State dependency statutes that address Cornerstones

- These may address services, placement, and assistance. Look to any issue-specific sections of your state statute (i.e. the portion that deals with services, visits, or placement). Argue that your advocacy fulfills the spirit if not the letter of that section.

State Regulations

- These detail the obligations that agencies owe parents and children. For example, most states have regulations which include specific agency obligations regarding visits, conferences and services, and placement.

Administrative directives, memos, and guidelines

- Find these on state and county Web sites. While not law per se, they typically represent social service providers’ interpretation of best practices and legal obligations and thus can be persuasive in convincing an agency or a judge to move on a Cornerstone issue.

Arizona Cornerstone Architecture

- Reasonable Efforts Language

(i.e. A.R.S. § § 8-824, 8-825(D), 8-829, 8-843, 8-846, 8-457 (B)(2 & 3) and 8-862(B)(2) *plus* 17B A.R.S. Juv. Ct. Rules of Proc., Rule 47.1(F))

--and/or--

- Cornerstone Specific Statutes

(i.e. A.R.S. § 8-513 –fc’s right to maintain contact with friends and other relatives; § 8-514 – placement; § 8-529 – rights of foster children; § 8-845 – award of dependent child following disposition including to extended family and persons with a significant relationship with the child; and § 8-846 – services provided to the child and family)

--plus--

Arizona Cornerstone Architecture cont.

- DCS Policy & Procedural Manual

Services: Chapter 3, Sections 2 and 2.4

Team Decision Making Meetings and Staffings: Chapter 2, Section 8 and
Chapter 3, Section 2

Placement: Chapter 3, Sections 2 and 2.5 and Chapter 4, Sections 1, 2, 3,
and 6

Visitation: Chapter 3, Sections 2.4 and 9

--plus--

- Visitation Supervision Continuum

“Visitation should focus on allowing natural parent-child interaction” and
because it may take awhile for a parent and child to reconnect and feel
comfortable with one another, visits should be “as long as possible”

Example:
**Application for Child to be Placed with a Godparent so that She can Remain
in her School**

Statutory Support

A.R.S. §§ 8-829 and 862 . . . Require the Court to determine whether reasonable efforts have been made to finalize the permanency plan. *Argue that exploring the godparent and keeping the child in her school are reasonable efforts in support of reunification* if that is the plan in effect!

--

A.R.S. § 8-829(A)(4). . . Places the burden on the Department to present evidence why placement with a relative or a person with a significant relationship with the child is not in the child's best interests.

--

A.R.S. §8-514 . . . DCS must place a child "in the least restrictive type of placement available, consistent with the needs of the child." Placement preference is with a parent, grandparent, and "[i]n kinship care with another member of the child's extended family, including a person who has *a significant relationship with the child.*"

--

A.R.S. §8-513 . . . A child in care "has the right to maintain contact with friends and other relatives unless the court has determined that contact is not in the child's best interests"

--

A.R.S. §8-529 . . . A child in care has the right to "attend community, school and religious services and activities of the child's choice"

--

Application for Child to be Placed with a Godparent so that She can Remain in her School cont'd.

A.R.S. §8-846 . . . When a child is removed from the home, “the court shall order the department to make reasonable efforts to provide services to the child and the child’s parent”

-and-

Arizona Administrative Code

Section R6-5-5827: Placing agreement shall set forth the responsibilities of the foster parent regarding requirements for interactions with the child.

Section R6-5-5829: A foster parent shall maintain a working relationship with a fc’s parent, birth family, and other significant persons, in accordance with the child’s case plan and in cooperation with agency staff.

DCS Policy and Procedural Manual

Chapter 3, Section 2: stresses stability for school-aged children in out-of-home care. They are “entitled to remain in their original school even when they move to a foster placement in a different school district” See *also* Chapter 3, Section 26.

Chapter 3, Section 2.5: every child must have an “individualized Out-of-Home Care Plan” that specifies: the name/address of the child’s school and whether the child is in school in their home school district; special needs of the child; ways the child will maintain contact with his/her family and extended family; whether the child is placed in close proximity to a parent’s home (if not, why not); whether the child is in the least restrictive setting consistent with the child’s special needs and best interests; and whether the child is with a caregiver who speaks the same language.

Application for Child to be Placed with a Godparent so that She can Remain in her School cont'd.

- **Chapter 4, Section 1:** directs the department to make every effort to minimize length of out-of-home care by “working closely with parents, extended family, and community support networks to facilitate the child’s safe return home”
- **Chapter 4, Section 3:** defines a kinship caregiver is “an adult relative or person who has a significant relationship with the child”
- **Chapter 4, Section 6:** requires the department, when selecting an out-of-home care provider, to “seek adult relatives or adults with whom the child has a significant relationship to meet the placement needs of the child in out-of home care.” Among other considerations, also requires the department to try to place the child:
 - in close proximity to the parents’ home
 - in the least restrictive placement that will meet the child’s needs
 - within the child’s own school district
 - with caregivers who can communicate in the child’s language

(bonus provision if you are also arguing that the godparent is willing to be a visit host)

- **Chapter 3, Section 2.4:** visitation shall take place in the most natural, family-like setting possible and with as little supervision as possible while still ensuring the safety and well-being of the child

Example: Application for Visit Host

Statutory Support

(A.R.S. § 8-824) Court to order visitation at preliminary protective hearing. Department must submit proposal for visitation with fc's parents or guardians, and, if fc not placed with a grandparent, whether any relatives or interested parties are able/willing to take temporary custody. (H)(5 and 9). Court must enter orders regarding visitation, and, if a relative is identified as a possible placement resource, notify the relative of the right to be heard in any proceeding regarding the child. (J)

(A.R.S. § 8-513) Child in out-of-home care has the right to participate in activities that are usual and normal for child's age group. FC has the right to maintain contact with siblings, family, and friends.

(A.R.S. § 8-813) DCS must develop policies and procedures that allow the child to maintain contact (telephone, mail, visitation) with parents, family members, friends, and other relatives if in child's best interests. (B)

(A.R.S. §§ 8-829 and 862) Court to continually assess whether reasonable efforts have been made to finalize the existing permanency plan. (*See also 17B A.R.S. Juv.Ct. Rules of Proc., Rule 47.1.*)

Application for Visit Host, cont'd

-plus-

Policy Support

DCS Policy and Procedural Manual

- **Chapter 3, Sections 2.4 and 9:** DCS “shall facilitate visitation and ongoing contact between a child in out-of-home care and the child’s parents, family members, their relatives and individuals with significant relationships to the child to preserve and enhance relationships with and attachments to the family of origin.”
- all case plans for fc must include a contact and visitation plan developed with involvement of family members and the child, if age appropriate, or case plan must document why contact or visitation contrary to child’s safety and well-being.
- **Chapter 3, Section 9:** “Visitation shall take place in the most natural, family-like setting possible and with as little supervision as possible while still ensuring” child’s safety and well-being.
- **Chapter 3, Section 9:** Child-specific factors to be considered when formulating a visitation plan include importance of contact with family and extended family members, chronological age and development, therapeutic needs, and school and activity schedules.

-plus-

Application for Visit Host, cont'd

Visitation Supervision Continuum

- Because research has shown a positive correlation between family contact and family reunification, visitation is an important component of Reasonable Efforts when children are placed in out-of-home care.
- "VISITATION IS THE RIGHT OF THE CHILD."
- Visitation, even when initially supervised, should be in the "most natural, family-like setting possible" and should focus on allowing natural parent-child interactions (cooking and eating together, reading, playing a game, etc.).
- Visits "are planned to occur often and increasing over time in frequency and duration." They should occur at least weekly, and in most instances, "as much visitation as feasible is appropriate." Because parents and their children in out-of-home care may need an opportunity to reconnect, visits should be as long as possible.
- Visitation is helpful in implementing many essential family reunification goals including maintaining family /sibling relationships, enhancing parent and child self-images, promoting partnership between parents and foster parents, and practicing parenting skills.
- Visitation plans should take into account family members' needs, resources, and concerns. They should be designed to "best meet individual children's and parents' needs."
- "When the family members' right to contact conflicts with the needs or preferences of substitute caregivers or service providers, the conflict should be resolved in a way that protects and assures the family members' right to contact."
- Continuum includes guidelines for visitation with "Moderate Supervision" and "Relaxed and/or Intermittent Supervision" including overnights.

“Small Litigation” and the Cornerstone Application for a Visit Host

*Remember: You rarely have to have an extensive hearing to make a good record and/or be persuasive on a Cornerstone application—
think “mini litigation.” (i.e. asking a few questions on the record of a parent, caseworker, or interested party or handing in a report)*

*And Remember.....SHOW AND TELL is the rule of thumb when raising any
Cornerstone issue: you may have to provide copies of regulations and/or
Policy letters or Administrative Directives to convince the Agency or Judge*

Oral Application:

Argue that the DCS has recognized the importance of visitation as a tool for reunification and that effective implementation of visitation plans involves family-specific case planning, and flexibility for family preference. Policy already anticipates visits taking place at sites other than the Department or the parent’s home. **(DCS Manual, Visitation Supervision Continuum)**

Argue that the involvement of extended family and significant persons during both court hearings as well as department meetings is envisioned by statute and policy **(A.R.S. §§ 8-824 and 8-829, DCS Manual, VSC)**

Argue that involvement of extended family members and significant persons is at the heart of Departmental obligations, e.g., minimizing disruption to a child’s pre-custody life **(§ 8-513)**, developing visitation plans with the involvement of family members and the child **(DCS Manual)**, etc.

Argue that a visit host is a reasonable effort towards reunification, and the Court is regularly scrutinizing those efforts. **(§§ 8-829 and 8-862)**

Argue that, in light of the above, a clear mandate for the facilitation of visit hosts exists, and such practice offers a valuable opportunity for achievement of the permanency goals in compliance with both statutory obligations and policy guidelines.

Offer brief testimony on this issue, i.e. have the potential visit host present to tell the court under oath about his/her relationship with the child and parent; have the parent tell the court about the relationship; and have the proposed visit host state how s/he would handle visits. (This only take a few minutes and makes the record.)

Show and Tell: hand up copies of any applicable regulations including the DCS Manual and the Visitation Supervision Continuum.

Motion or OTSC:

Argue as stated above;

Attach: applicable statutes and pages from the DCS Manual and the VCS as well as an affidavit of the visit host or your own affirmation indicating that you have spoken with the proposed host and/or the parent about the relationship. Provide detail about the history between the child and the host and intended activities, safety plans, etc.

****In the situation of either papers or an oral application, if the court is unwilling to order the agency to begin visits between your client and the children supervised by the visit host, ask that the agency “**explore and report**” back in a short time frame; often an agency does not want to come back to court just to say ‘no.’ (explore and report can really work!)**



Practice Shifts you can Make Now—some are just “Small Adjustments”

1. Always ask WHY?
2. Learn to REFRAME
3. ARGUE from Common Sense and Compassion
4. LEARN a few regs or policy directives
5. Explore and Report
6. Develop Reasonable Efforts “scripts”
- *7. Review Arizona Practice Standards

Resources

Center for Family
Representation

212-691-0950

www.cfrny.org

info@cfrny.org

Annie E. Casey Foundation

www.aecf.org

National Resource Center for
Permanency and Family
Connections

<http://www.nrcpfc.org/>

Child Welfare Information
Gateway

<http://www.childwelfare.gov>

National Project to Improve
Representation for Parents
Involved in the Child Welfare
System

[www.abanet.org/child/parent
representation/home.html](http://www.abanet.org/child/parentrepresentation/home.html)



These materials were made possible, in part, through the generous support of the Sirus Fund, the Gimbel Foundation, and the Annie E. Casey Foundation. The views expressed here are those of CFR and are not attributable to these funders. All rights reserved 2016.

Arizona Resources

Arizona Department of
Child Safety

<https://dcs.az.gov/>

Arizona DCS Policy and
Procedural Manual

<https://extranet.azdes.gov/dcyfpolicy/PDF/PDF.pdf>

DCS Visitation
Supervision Continuum

hyperlink within the Policy and
Procedure Manual, Chapter 3,
Section 9

Child and Family Law Clinic
Dependency Handbook

(http://law2.arizona.edu/clinics/child_and_family_law_clinic/Materials/CHILD%20AND%20FAMILY%20LAW%20CLINIC%20Handbook2015.pdf.)

Department of Child
Safety Publications

(<https://dcs.az.gov/data/publications>)

Arizona Court Rules

[https://govt.westlaw.com/azrules/Index?_lrTS=20160414224507226&transitionType=Default&contextData=\(sc.Default](https://govt.westlaw.com/azrules/Index?_lrTS=20160414224507226&transitionType=Default&contextData=(sc.Default)



Special thanks to

David Byrne, Law Graduate

Caleb Chappelear, DCS Asst. Program Manager

Kim Chappelear, M.A.

Megan Gardner, Esq.

Michele Holden, Esq.

the Honorable Richard Weiss, Mohave County
Superior Court Judge